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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

**Advanced Television Systems and  
 Their Impact Upon the Existing  
 Television Broadcast Service**

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MM Docket No. 87-268

To: The Commission

Statement of America's Public Television Stations and  
 The Public Broadcasting Service in  
Support of NAB's Petition for Further Notice of Proposed Rulemaking

America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") are submitting this filing in support of the Petition For Further Notice of Proposed Rule Making in the above-captioned proceeding which was submitted by the National Association of Broadcasters ("NAB") on May 30, 1997. The NAB's petition requests that, with the advent of the transition to digital television, the Commission adopt rules that effectively will preempt certain state and local governmental restrictions that impair the ability of broadcasters to site, construct or modify broadcast facilities.

APTS and PBS are nonprofit organizations whose members comprise nearly all of the nation's 175 noncommercial educational television licensees. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, as well as engaging in planning and research activities on behalf of its members. PBS provides program distribution and other services to its members and is also a

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leader in the development of new and improved television technologies and frequently speaks for the public television community in matters relating to the use of the television broadcast spectrum.

APTS and PBS support the NAB's petition and request for rule making. As the NAB points out, the Commission has found that the preservation of free, over-the-air television service is an immensely important goal that cannot be advanced unless television broadcasters move to a digital medium. Furthermore, the Commission has noted that DTV will fail if conversion is not undertaken in an aggressive, rapid manner, and it has thus set out an ambitious schedule of construction deadlines for the television industry. However, even given this articulated understanding of the need for a swift conversion, the Commission has not yet removed one of the largest obstacles from the path of the broadcasters who must make this transition—the elimination of restrictive local and state regulations on the placement and use of broadcast facilities.

Consequent with the immediacy of the DTV deadlines is the necessity of extensive and concentrated tower construction for the large number of television stations that cannot erect digital facilities at their current transmitter locations. In addition to the technical and resource issues looming large on the horizons of many public television licensees, these licensees also face the pressing problems of state and local government restrictions on tower siting and construction.

In its petition, the NAB details numerous examples of the barriers encountered by those stations who have attempted to begin their shift into the digital television medium. These broadcasters have met with lengthy delays and enormous expenditures which have made their attempts at compliance with the Commission's DTV mandate all but futile. If the

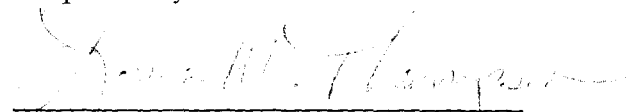
Commission truly believes that a rapid conversion to DTV is an essential goal, state and local regulations must be preempted.

The Supreme Court, in addition to lower federal courts, has continually reaffirmed the power of federal agencies, including the FCC, to preempt non-federal regulations. A two-pronged test has been established to determine whether a federal agency may exercise that power in a given instance. A federal agency may preempt non-federal regulation if the federal objective is within the constitutional authority of the agency, and the non-federal regulation stands as an obstacle to the achievement of that objective. As the NAB correctly explains, Congress has given the Commission a substantial grant of authority to facilitate the transition to DTV, and preempting inhibiting local regulations is an objective that certainly falls within the scope of that authority. State and local tower siting and construction regulations often obstruct broadcasters' means of converting quickly to DTV, and may therefore be rightfully subjected to the Commission's preemption.

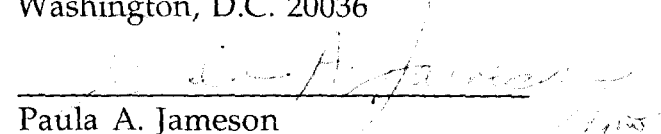
Obviously, there is a balance that must be struck between the preemption of these non-federal regulations and the legitimate desires of state and local authorities to, inter alia, protect public safety and welfare. However, given this balance there is nothing that precludes the Commission from determining that the balance tips in favor of preemption. One of the most important preemption provisions in the Telecommunications Act directs the Commission to preempt state or local actions that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." It seems clear that non-federal regulations, which interfere with broadcasters' ability to provide digital television service, have just that effect.

APTS and PBS thus echo the arguments of the NAB in its petition, and respectfully request that the Commission issue a Notice of Further Proposed Rule Making proposing to adopt the preemption rules suggested by the NAB.

Respectfully submitted,



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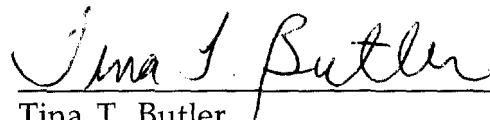
Date: August 8, 1997

### Certificate of Service

I, Tina T. Butler, hereby certify that I have on this 8th day of August, 1997, sent via first-class mail, postage prepaid, copies of the foregoing APTS/PBS Statement in Support of NAB and MSTV's Petition for Further Notice of Proposed Rulemaking to the following:

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A handwritten signature in cursive script that reads "Tina T. Butler". The signature is written in dark ink and is positioned above a horizontal line.

Tina T. Butler  
America's Public Television Stations